

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

E2INTERACTIVE, INC. and
INTERACTIVE COMMUNICATIONS
INTERNATIONAL, INC.,

JURY INSTRUCTIONS

09-cv-629-slc

Plaintiffs,

v.

BLACKHAWK NETWORK, INC.,

Defendant.

II. POST TRIAL JURY INSTRUCTIONS

Introduction

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict consisting of three questions. In answering the questions, you should consider only the evidence that has been received at this trial. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Answers Not Based on Guesswork

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

Burden of Proof—Preponderance of the Evidence

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true.

The Patent Claims

The claims of a patent are the numbered sentences at the end of the patent. In the '439 patent, the claims begin at column 14, line 64 and continue to the end of the patent, at column 18, line 49. The claims describe what the patent owner may prevent others from doing. We are concerned with claims 1 and 19 of the '439 Patent. InComm contends that Blackhawk infringed these claims. Blackhawk denies this.

Here, claim 1 is a method claim that describes "A computer-implemented method for processing a stored value card transaction request in a card data management system." Claim 19 is a computer program claim that describes "A computer program embodied in a computer-readable medium for processing a stored-value card transaction request in a card data management system."

To decide whether Blackhawk infringed the patent, you must compare the claims to the accused method or computer program. In reaching your determination with respect to infringement, you must consider each claim of the patent separately.

Interpretation of the Patent Claims

I have provided you with a copy of InComm's patent. I have previously defined a certain phrase in Claims 1 and 19. You must use this definition in making your decision. The phrase I have defined is as follows:

“determining if the requesting terminal is authorized to request the requested transaction type for the stored value card” is construed only to the extent that this step is not required to be based at least on the terminal identifier.

Infringement—Elements

In order to answer the question in the special verdict, you will need to determine whether Blackhawk infringed claim 1 or claim 19 of the '439 Patent. You must decide whether there is infringement separately for each claim.

InComm contends that the answer to both parts of the question should be “yes.” To succeed on this contention, InComm must prove the following by a preponderance of the evidence:

- (1) Every requirement in the particular claim of InComm's patent, including the preamble and body of the claim, that you are considering is found in Blackhawk's method or computer program; and
- (2) Blackhawk made, used, sold, or offered for sale that method or computer program in the United States.

Although the burden of proof is on InComm, you should base your decision on all of the evidence, regardless which party presented it.

Infringement—Definition

The owner of a patent has the right to prevent others from making, using, offering for sale or selling the invention covered by the patent. As I have explained, InComm contends that Blackhawk infringed claims 1 and 19 of the ‘439 patent. Only the claims of a patent can be infringed.

To determine whether Blackhawk infringed InComm’s patent, you must compare Blackhawk’s method to claim 1 and Blackhawk’s computer program to claim 19 of the ‘439 patent. If all of the requirements of a claim are in Blackhawk’s method or computer program exactly as they are in the claim, then that is infringement.

A requirement of a claim is found in Blackhawk’s method if the requirement is in the method exactly as it is in the claim. A requirement of a claim is found in Blackhawk’s computer program if the computer program is capable of operating exactly as described in claim 19 and no modifications of Blackhawk’s computer program are required to meet the requirements of claim 19.

Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. When thinking about who should be presiding juror, you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors

who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the courtroom.